

EXHIBIT 5:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SIMPLEAIR, INC., : Case No.
Plaintiff, : 2:14-cv-00011-JRG
v. :
GOOGLE INC, et al., :
Defendants. :

SIMPLEAIR, INC., : Case No.
Plaintiff, : 2:13-cv-00937-JRG
v. :
GOOGLE INC., :
Defendant. :

VIDEOTAPED DEPOSITION OF STEPHEN B. WICKER
San Francisco, California
Monday, March 9, 2015
9:30 a.m.

Job No. 91240

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6 The following is the transcript of the
7 videotaped deposition of STEPHEN B. WICKER held
8 at the offices of:
9
10

11 Quinn Emanuel Urquhart & Sullivan LLP
12 50 California Street, 22nd Floor
13 San Francisco, California
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17 Taken pursuant to applicable Rules of
18 Civil Procedure, before Linda S. Kinkade,
19 Registered Diplomate Reporter, Certified
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22 Certified Shorthand Reporter, as licensed by the
23 State of California.
24
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1 APPEARANCES:

2
3 On Behalf of Plaintiff:

4 Dovel & Luner

5 By: Simon Franzini, Esquire

6 201 Santa Monica Boulevard

7 Santa Monica, California 90401

8
9
10
11
12
13 On Behalf of Defendants:

14 Quinn Emanuel Urquhart & Sullivan

15 By: Michelle Clark, Esquire

16 50 California Street

17 San Francisco, California 94111

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20
21
22 Also Present:

23 Duane Groth, Videographer

1 BY MR. FRANZINI:

2 Q. What does the term "gateway" mean?

3 MS. CLARK: Object to form.

4 THE WITNESS: Within the context of
5 the asserted claims and my declaration, there
6 are two different gateways. Are you referring
7 to one or the other or are you speaking
8 generally?

9 BY MR. FRANZINI:

10 Q. I'm speaking generally about the term
11 gateway.

12 MS. CLARK: Object to form.

13 BY MR. FRANZINI:

14 Q. What is the ordinary meaning of the
15 term gateway to one of ordinary skill in the art
16 at the time of the filing of the patents in this
17 case?

18 A. Outside of the context of the asserted
19 claims and simply considering the word in
20 isolation, a person of skill in the mid-'90s
21 would have understood a gateway to be an
22 interface between two different kinds of
23 networks.

24 BY MR. FRANZINI:

25 Q. Would a person of ordinary skill in

1 would have an understanding of what
2 communicatively coupled means, and then that
3 understanding would be contradicted by the
4 understanding that the specification would
5 provide?

6 MS. CLARK: Object to form.

7 THE WITNESS: In paragraph 104 I state
8 that there is a dictionary definition of
9 coupled. So one of ordinary skill would infer
10 from that dictionary definition of coupled that
11 communicatively coupled means two or more
12 instruments are communicating.

13 So a person of skill would have a general
14 understanding of what the term meant, but that
15 understanding would be contradicted by what he
16 or she sees in the written description.

17 BY MR. FRANZINI:

18 Q. So without that contradiction --
19 withdrawn.

20 But for the what you call a contradiction
21 in the written description, one of ordinary
22 skill in the art would understand what
23 communicatively coupled means?

24 MS. CLARK: Object to form.

25 THE WITNESS: A person of skill would

1 be able to infer from the dictionary definition
2 that I cite some understanding of what
3 communicatively coupled means absent the
4 contradiction in the written description.

5 BY MR. FRANZINI:

6 Q. Well, one of ordinary skill in the art
7 would understand that communicatively coupled
8 means that two or more instruments are
9 communicating in your opinion?

10 MS. CLARK: Object to form.

11 THE WITNESS: Simply working with the
12 dictionary definition separate from the written
13 description, a person of ordinary skill would
14 infer that communicatively coupled means two or
15 more instruments are communicating.

16 BY MR. FRANZINI:

17 Q. So one of ordinary skill in the art
18 wouldn't need a definition or an explanation of
19 what communicatively coupled means in the
20 specification in order to understand the meaning
21 of that term.

22 MS. CLARK: Object to form.

23 THE WITNESS: Without looking at the
24 written description, a person of skill would be
25 able to infer a meaning for communicatively

1 coupled, but that meaning would be contradicted
2 by an investigation of the written description
3 itself.

4 BY MR. FRANZINI:

5 Q. I want to ask you about the
6 understanding that a person of ordinary skill in
7 the art would have of communicatively coupled
8 absent any contradiction in the written
9 description.

10 A. Okay.

11 Q. Is there anything in this definition
12 that would preclude one component of a server to
13 be communicatively coupled with a different
14 component of that same server?

15 MS. CLARK: Object to form.

16 THE WITNESS: Which definition are you
17 referring to?

18 BY MR. FRANZINI:

19 Q. I'd like to ask you about the
20 definition that one of ordinary skill in the art
21 would have of communicatively coupled absent any
22 contradiction in the written description.

23 A. Okay. So you're referring, then, to
24 paragraph 104 where I say that the person of
25 skill would infer from the dictionary definition

1 BY MR. FRANZINI:

2 Q. Could you please clarify?

3 MS. CLARK: Object to form.

4 THE WITNESS: What I state is that,
5 given a starting place, an inference may be
6 drawn to obtain a definition. I'm not saying
7 that without that starting place a person of
8 skill would be able to come up with
9 communicatively coupled. It's not a term of
10 art. It's not something that the person of
11 skill would have been familiar with.

12 BY MR. FRANZINI:

13 Q. A person of ordinary skill would have
14 access to dictionaries such as one that you
15 cite?

16 A. Yes.

17 Q. So a person of ordinary skill in the
18 art from 1995 to 1996 would be able to
19 understand the meaning of communicatively
20 coupled by drawing on things like dictionary
21 definition of coupled?

22 MS. CLARK: Object to form.

23 THE WITNESS: Given the dictionary
24 definition that I cite, a person of skill could
25 infer a definition.

1 described as being communicatively coupled are
2 depicted in the written description?

3 MS. CLARK: Object to form.

4 THE WITNESS: I rely on the entire
5 written description, but I do look at this
6 figure and cite it as an example.

7 BY MR. FRANZINI:

8 Q. So is it your understanding that --
9 withdrawn.

10 Looking at Fig. 2, would one of ordinary
11 skill in the art understand the wireless gateway
12 to be communicatively coupled with the
13 information gateway?

14 MS. CLARK: Object to form.

15 THE WITNESS: I note in my declaration
16 that, according to this figure and the
17 associated text in the written description,
18 column 8, line 6, to column 9, line 17, a person
19 of skill would understand that the information
20 gateway is communicatively coupled to the
21 wireless gateway 136 and content manager 114.

22 BY MR. FRANZINI:

23 Q. Would it also be communicatively
24 coupled with the subscriber database 130?

25 MS. CLARK: Object to form.

1 one of the hosts tried to talk to the other host
2 it would get a response.

3 BY MR. FRANZINI:

4 Q. So defendants' construction has one or
5 more content or online service providers
6 including -- withdrawn.

7 Defendants' construction of an information
8 source is one or more content or online service
9 providers including all content providers on the
10 Internet that provide data to the central
11 broadcast server, right?

12 A. That's correct.

13 Q. So you just mentioned that it's
14 possible to have a content provider on the
15 Internet that does not provide data to the
16 central broadcast server.

17 MS. CLARK: Object to form.

18 THE WITNESS: It is possible for one
19 host to be on the Internet and another host to
20 be on the Internet and yet they never actually
21 communicate because, for whatever reason, one
22 host never contacts the other. It doesn't mean
23 they are not hosts on the Internet.

24 BY MR. FRANZINI:

25 Q. So as you understand defendants'

1 construction, does the information source
2 actually have to provide data to the central
3 broadcast server -- withdrawn.

4 Under your understanding of defendants'
5 construction of an information source, to meet
6 the definition of an information source must a
7 content provider actually provide data to the
8 central broadcast server or not?

9 MS. CLARK: Object to form.

10 THE WITNESS: It must be able to
11 provide information to the central broadcast
12 server, if asked. This definition -- this
13 construction -- does not mean to me that all
14 content providers on the Internet are constantly
15 bombarding the central broadcast server with
16 information.

17 BY MR. FRANZINI:

18 Q. So if a content provider is on the
19 Internet but it never provides data to the
20 central broadcast server, it could still meet
21 the definition of an information source in your
22 opinion?

23 A. It would be an information source if
24 asked data was provided. But if it's never
25 asked, it could still be an information source

1 even though it never actually provides data.

2 Q. So defendants' construction is one or
3 more content or online service providers that
4 provide data to the central broadcast server,
5 but you're interpreting that to mean that they
6 don't actually have to provide data to the
7 central broadcast server?

8 MS. CLARK: Object to form.

9 THE WITNESS: That provide data to the
10 central broadcast server, if asked.

11 BY MR. FRANZINI:

12 Q. Does defendants' construction include
13 an "if asked" at the end?

14 A. I think a person of skill would
15 understand that this construction is not
16 intended to mean that all content providers are
17 continually providing data to the central
18 broadcast server.

19 Q. Well, there's a distinction between a
20 content provider that continuously provides data
21 to the central broadcast server and one that
22 does sometimes, correct?

23 MS. CLARK: Object to form.

24 THE WITNESS: That is certainly the
25 case.

1 BY MR. FRANZINI:

2 Q. So in your opinion a content or online
3 service provider could meet the definition of an
4 information source even though it never provides
5 data to the central broadcast server.

6 MS. CLARK: Object to form.

7 THE WITNESS: Again, if the content
8 provider is capable of providing data when asked
9 and it's never asked, it won't provide data.

10 BY MR. FRANZINI:

11 Q. But it would still be an information
12 source in your opinion.

13 MS. CLARK: Object to form.

14 THE WITNESS: It would be an
15 information source in the sense that, if asked,
16 it would provide data.

17 BY MR. FRANZINI:

18 Q. Please turn to Claim 1 of the '279
19 patent.

20 A. Okay.

21 Q. Claim 1 recites a system to transmit
22 data from an information source to remote
23 computing devices and that system includes a
24 central broadcast server.

25 A. That's correct.

1 BY MR. FRANZINI:

2 Q. Is it your opinion that a content or
3 online service provider must be on the Internet
4 to be an information source?

5 A. No.

6 Q. So the only difference between
7 defendants' proposed construction and
8 SimpleAir's proposed construction, as I see it,
9 is the clause "including all content providers
10 on the Internet."

11 A. That's correct.

12 Q. You mentioned before that you
13 understood that to mean that the Internet itself
14 could be an information source.

15 A. That's correct.

16 Q. So the only difference between
17 defendants' proposed construction and
18 SimpleAir's proposed construction, as you
19 understand it, is that, under defendants'
20 proposed construction, the Internet itself could
21 satisfy the an information source limitation
22 whereas in SimpleAir's proposed construction it
23 could not?

24 A. The plaintiff's proposed construction
25 fails to account for the fact that the

1 specification clearly cites the Internet as an
2 information source.

3 Q. So your understanding is that the
4 difference between SimpleAir's proposed
5 construction and defendants' is that defendants'
6 allows for the Internet itself to be an
7 information source whereas SimpleAir does not
8 make that clear?

9 A. That's correct.

10 Q. And that's the reason that you believe
11 the phrase "including all content providers on
12 the Internet" should be included in the
13 construction of an information source?

14 A. That's correct.

15 Q. Your construction of data is content
16 of a message?

17 A. With examples, that's correct. I do
18 add "such as news, weather, sports or financial
19 information."

20 Q. What do you mean by "content"?

21 A. The information-carrying capacity.

22 Q. So would that exclude information
23 that's in the header of a message?

24 MS. CLARK: Object to form.

25 THE WITNESS: Within the context of

1 people of skill would recognize the general
2 definition of data to be the content of a
3 message, as distinguished from header
4 information.

5 BY MR. FRANZINI:

6 Q. Can the word "data" outside the
7 context of the specification of the asserted
8 patents also refer to information that's not the
9 content of a message, such as the header?

10 A. I have seen that less frequently, but
11 I have seen examples of it.

12 (Exhibit 7 was marked for identification.)

13 BY MR. FRANZINI:

14 Q. I'm showing you the declaration of
15 Dr. Knox that was submitted in this case.

16 A. Yes.

17 Q. Please turn to paragraph 16.
18 Paragraph 16 sets forth two dictionary
19 definitions of the word "data."

20 A. Okay.

21 Q. Outside of the context of the asserted
22 patents, do you believe this is an incorrect --
23 either of these definitions are an incorrect
24 definition of the word "data"?

25 A. Okay. I think the first definition,

1 What I'm trying to understand is can the word
2 "data" be used outside of the context of the
3 patent in a broader sense to include information
4 suitable for digital transmission or computer
5 use that's not the content of a message, such
6 as, for example, header information?

7 MS. CLARK: Object to form.

8 THE WITNESS: I would not use the term
9 that way.

10 BY MR. FRANZINI:

11 Q. Well, my question is a little
12 different. Can the word "data" be used in a
13 broader sense that includes header information?

14 MS. CLARK: Object to form.

15 THE WITNESS: I have seen it used that
16 way. I don't believe it's a consistent usage of
17 the term. I don't use it that way, again,
18 unless I append modifiers to the term "data."

19 BY MR. FRANZINI:

20 Q. So as it's used by people of ordinary
21 skill in the art, data can include things like
22 the header information in certain circumstances,
23 but you personally don't like that use of the
24 word "data"?

25 MS. CLARK: Object to form.

1 THE WITNESS: I think it's more
2 accurate to say that there are people who use
3 "data" in a loose manner to cover anything
4 that's transmitted, and I don't agree with that.
5 I like to distinguish data from control
6 information, and I have in the past.

7 BY MR. FRANZINI:

8 Q. Please turn your attention back to
9 paragraph 16 of Dr. Knox's declaration. Looking
10 at the first definition of data in paragraph 16,
11 that doesn't distinguish between the content of
12 a message and other information such as the
13 header of a message, does it?

14 MS. CLARK: Object to form.

15 THE WITNESS: Well, it does say
16 information which is represented in a manner
17 suitable for digital transmission or computer
18 use. It would depend on how you read the word
19 "information." If you were going to include
20 control information, then you're correct.

21 BY MR. FRANZINI:

22 Q. Do you provide any definitions in
23 your -- withdrawn.

24 Do you provide any dictionary definition
25 in your declaration of "data" that limit the

1 BY MR. FRANZINI:

2 Q. Now you mentioned before that some
3 people use the word "data" to refer to
4 information other than the content of the
5 message, but that you disagree with that use.

6 A. That's correct.

7 Q. Now the patent actually uses the word
8 "data" to refer to information other than the
9 content of a message, correct?

10 A. Can you point me to a specific
11 instance?

12 Q. Well -- withdrawn.

13 Do you know whether or not the patent uses
14 the word "data" to refer to information other
15 than the content of a message?

16 MS. CLARK: Object to form.

17 THE WITNESS: Well, it's my
18 recollection that the patents are -- it's the
19 same written description -- they are consistent
20 in talking about data as being the content of a
21 message.

22 BY MR. FRANZINI:

23 Q. So you're not aware of anywhere in the
24 written description of the patent where the word
25 "data" is used to refer to information other

1 than the content of a message?

2 MS. CLARK: Object to form.

3 THE WITNESS: Not that I recall.

4 BY MR. FRANZINI:

5 Q. Please turn to -- pull out the '279
6 patent, please.

7 A. Okay.

8 Q. Turn to column 22.

9 A. All right.

10 Q. On line -- well, starting at line 13
11 of the -- of column 22 of the '279 patent, it
12 says:

13 The process of targeting data to
14 a user utilizing real and virtual
15 addresses is illustrated in
16 Fig. 15. Data blocks are built
17 in the information gateway and
18 all applicable real and virtual
19 addresses are determined based on
20 the type of information in the
21 data block and user subscription
22 data from the subscriber
23 database.

24 A. Okay.

25 Q. Does "user subscription data" refer to

1 the content of the message?

2 MS. CLARK: Object to form.

3 THE WITNESS: Okay. So what's being
4 described here, data blocks are built in the
5 information gateway and all applicable real and
6 virtual addresses are determined based on the
7 type of information in the data block, what sort
8 of content is there in the data block, and user
9 subscription data from the subscriber database.

10 So the information gateway is pulling
11 subscription data from the subscriber database
12 in an effort to determine who should receive the
13 content.

14 BY MR. FRANZINI:

15 Q. Now that subscription data does not
16 refer to the content of a message, right?

17 A. Subscription data is not the content
18 of the message; it is the content of the
19 subscriber database. So it is content from the
20 subscriber database as opposed to content that
21 would be in the data blocks.

22 Q. Please turn to column 22, line 59.

23 A. Okay.

24 Q. Line 59, the written description of
25 the '279 patent says:

1 The communication server 38
2 receives data from the wireless
3 device via the interface,
4 extracts the different types of
5 data blocks, passes public data
6 blocks to the user interface
7 alert panel and processes private
8 data blocks locally.

9 A. Okay.

10 Q. The communication server 38 is also
11 responsible for initializing the
12 wireless device and maintaining
13 the address database which
14 determines which received
15 messages will be processed. In
16 addition, it provides diagnostic
17 data on the received messages for
18 software debug purposes.

19 A. Okay.

20 Q. Now diagnostic data does not refer to
21 the content of the message in this passage,
22 correct?

23 MS. CLARK: Object to form.

24 THE WITNESS: Just to be clear, the
25 term "data" is being construed in light of the

1 claim in which it's used, and that's what I
2 addressed. There are other types of data in the
3 world other than data that goes into the claimed
4 messages in the -- in the asserted claims of the
5 patent. So, yes, there are different kinds of
6 data.

7 BY MR. FRANZINI:

8 Q. And your definition of data is one
9 that you believe is appropriate in the context
10 of the claims as they are described in the
11 written description?

12 A. Exactly.

13 Q. So just to be clear, your construction
14 of the word "data" isn't a general definition of
15 data; it's a particular definition that you
16 believe applies within the context of the
17 asserted claims?

18 MS. CLARK: Object to form.

19 THE WITNESS: The construction I
20 provide is what I believe the person of ordinary
21 skill would believe data to mean in the context
22 of the claims in light of the written
23 description.

24 BY MR. FRANZINI:

25 Q. So it's not a general definition of

1 Withdrawn.

2 It's your belief that the written
3 description and the figures that you cite all
4 use the word "data" consistent with defendants'
5 proposed construction but none of them define
6 data to mean content of a message or disclaim
7 certain meanings of the word "data."

8 MS. CLARK: Object to form.

9 THE WITNESS: None of what I cite sets
10 itself forth as an explicit definition for the
11 word "data."

12 BY MR. FRANZINI:

13 Q. It also doesn't disclaim certain
14 meanings of data, correct?

15 MS. CLARK: Same objection.

16 THE WITNESS: There's no explicit
17 disavowal of what data covers or doesn't cover.

18 BY MR. FRANZINI:

19 Q. So let's take a look at the figure --
20 withdrawn.

21 Let's take a look at paragraph 49 of your
22 declaration.

23 A. Okay.

24 Q. Now it's your position that the
25 description in the -- withdrawn.

1 forth any opinions regarding what the specific
2 flags mean. They are a form of overhead. I
3 don't consider them to be data.

4 Q. Let's see if we can get some more
5 clarity on what happens to the data blocks.
6 Withdrawn.

7 So the data block depicted in Fig. 5 is
8 broken down into messages and then the messages
9 are broken down into packets?

10 A. That's correct.

11 Q. Is all the information in Fig. 5
12 included in the messages that are then broken
13 down into packets or is only some of the
14 information in Fig. 5 included in those
15 messages?

16 MS. CLARK: Object to form.

17 THE WITNESS: Looking at the bottom of
18 column 12 and going on to column 13 of the '279,
19 column 12, line 64:

20 Data from the information sources
21 is packed into 8-bit binary
22 format data blocks in the central
23 broadcast server 34. The two
24 basic data block types are
25 illustrated in Figs. 5 and 6.

1 You're asking about Fig. 5.

2 In particular, Fig. 5 defines the

3 8-bit binary format information

4 notification data blocks while

5 Fig. 6 defines the 8-bit binary

6 format for personal alert

7 notification data blocks.

8 Information notification data

9 blocks illustrated in Fig. 5

10 contain general information

11 targeted to all users, including

12 but not limited to news headlines

13 and stories, sports scores,

14 financial market information,

15 data, and so forth.

16 Moving ahead a little bit to line 11:

17 Prior to transmission at the

18 central broadcast server the data

19 packets are encoded using a

20 protocol suitable for the

21 transmission of information.

22 Data blocks are packetized for

23 transmission over the wireless

24 broadcast network using

25 transmission protocols.

1 It's my understanding, based on that, that
2 all of Fig. 5 is broken down -- or segmented is
3 the typical term -- for inclusion in the payload
4 of, for example, an IP packet -- actually TCP
5 packet and then an IP packet.

6 BY MR. FRANZINI:

7 Q. So all the information in Fig. 5.1 is
8 included in the payload of a TCP/IP packet?

9 A. There is really no such thing as a
10 TCP/IP packet. There is TCP and IP and then
11 there's many dozens of other protocols within
12 the general framework of TCP/IP.

13 TCP is the Transmission Control Protocol.
14 It operates the transport layer, and so it has a
15 payload, if you want to set up a TCP session --
16 that's not described in the patent -- but if you
17 were to do so, you would use the payload of the
18 TCP packet for your block and then take the TCP
19 segment and put it in the payload of an IP data
20 crimp.

21 Q. So all the information depicted in
22 Fig. 5 is included in a TCP packet?

23 A. For example, yes, which would then be
24 encapsulated in an IP packet for transmission.

25 Q. So I want to go back to the breaking

1 Q. Well, I believe that Fig. 9 --
2 withdrawn.

3 We'll get to the single packet data block
4 situation in a second.

5 A. Okay.

6 Q. I want to talk about a situation where
7 a data block is broken up into multiple packets.

8 A. Okay.

9 Q. Now you mentioned before that all the
10 information in a data block that's set forth in
11 Fig. 5 is included in the payload of a packet.

12 A. One or more packets.

13 Q. One or more packets. And those one or
14 more packets, their structure is described in
15 Fig. 8?

16 MS. CLARK: Object to form.

17 THE WITNESS: Fig. 8 is the 8-bit
18 binary format for a packet.

19 BY MR. FRANZINI:

20 Q. Now when you said payload of the
21 packet before, were you referring to the packet
22 contents, Fig. 8?

23 A. Yes.

24 MS. CLARK: Object to form.

25 BY MR. FRANZINI:

1 Q. So the information that's described in
2 Fig. 5 is in the packet contents field described
3 in Fig. 8?

4 A. Or distributed across several packet
5 contents, that's right.

6 Q. And now in the case of a -- where a
7 data block is enclosed in a single packet, which
8 we were just discussing, does Fig. 9 describe
9 the structure of a single packet data block?

10 A. Yes.

11 Q. And now in the packet contents, all of
12 the information in Fig. 5 would be in the packet
13 contents?

14 MS. CLARK: Object to form.

15 MR. FRANZINI: Withdrawn. I'll give
16 it to you again.

17 BY MR. FRANZINI:

18 Q. In the situation where a data block as
19 described in Fig. 5 is included in a single data
20 packet, all of the information in Fig. 5 would
21 be in the packet contents field of Fig. 9?

22 A. That's correct, as based on the
23 portion of the written description that I just
24 read.

25 MR. FRANZINI: Shall we take a break?

1 that we talked about earlier today?

2 A. Yes.

3 Q. So what you mean is that the -- well,
4 withdrawn.

5 So information source for a particular
6 piece of data must necessarily produce the
7 content of a message by either creating the
8 content of the message itself or combining the
9 content from subparts it receives from other
10 sources?

11 A. Yes.

12 Q. So here you list two ways that an
13 information source can produce data. It can do
14 it by creating the content or by taking the
15 content from elsewhere and combining it.

16 MS. CLARK: Object to form.

17 BY MR. FRANZINI:

18 Q. Is that correct?

19 A. That's correct.

20 Q. So in your opinion producing data
21 includes producing data by creating it, creating
22 the content, and producing data by combining the
23 content?

24 MS. CLARK: Object to form.

25 THE WITNESS: What I state is the

1 MS. CLARK: Object to form.

2 THE WITNESS: Generation is an act of
3 creation. It's not an act of simply passing
4 along something what it obtains from elsewhere.
5 It's the standard English meaning of the word
6 "generate."

7 BY MR. FRANZINI:

8 Q. So the word "generating" is what
9 causes you to believe that generating data
10 includes producing data by creating the content
11 but not producing data by combining the content
12 received from other sources?

13 MS. CLARK: Object to form.

14 THE WITNESS: Generating does not
15 include combining from other sources.

16 BY MR. FRANZINI:

17 Q. So your understanding that the claim
18 phrase "generating data" excludes combining
19 content from other sources comes from the word
20 "generating"?

21 MS. CLARK: Object to form.

22 THE WITNESS: The word "generate" does
23 not cover combining from other sources.

24 BY MR. FRANZINI:

25 Q. Now suppose that -- withdrawn.

1 Do you have any -- did you provide any
2 dictionary definitions of the word "generating"
3 in your declaration?

4 A. No, I don't believe I did.

5 Q. Did you provide any evidence at all
6 about the meaning of the word "generating"?

7 A. Other than my opinion and what I cite
8 from the written description, no.

9 Q. When you say what you cite from the
10 written description, what are you referring to?

11 A. The use of the word "generate" in
12 paragraph 57.

13 Q. Well, in paragraph 57 it looks like
14 you're quoting the claim term "generating data."

15 A. That's correct.

16 Q. You're not citing the word "generating
17 data" in the written description, correct?

18 A. The data means generated by the
19 information sources is what I'm citing in
20 paragraph 57.

21 Q. Do you quote a passage from the
22 written description that uses the word
23 "generating" in paragraph 57?

24 A. It has the word "generated." It's not
25 the specific conjugation you're referring to,

1 but it says the 154 patent in column 7, lines
2 59 -- line 59 through column 8, line 5, includes
3 the words "the data feeds generated by the
4 information sources."

5 Q. The paragraph -- withdrawn.

6 Does that paragraph say how the
7 information sources produce the data feeds?

8 A. No, it does not.

9 Q. It doesn't say that, for example, that
10 the data feeds are produced by creating the
11 content of the data, correct?

12 MS. CLARK: Object to form.

13 THE WITNESS: It says the data feeds
14 generated by the information sources.

15 BY MR. FRANZINI:

16 Q. Is there anything about this paragraph
17 that you cite that leads you -- that you can
18 point to as evidence of the fact that the word
19 "generated" means producing by creating and
20 excludes producing by combining?

21 A. I would note that the data feeds
22 generated by the information source still makes
23 sense, if we say the data feeds created by the
24 information sources, but it's hard to see how an
25 information source is actually a source if

1 generated could mean producing data to be
2 transmitted by creating or combining data, which
3 would mean there's some other source for the
4 source.

5 Q. Well, the information source is the
6 source of the data feeds, correct?

7 A. That's correct.

8 Q. And those data feeds could be produced
9 by generating data or by combining data,
10 correct?

11 A. That's correct, given the caveats we
12 went through earlier as to how produce means a
13 bit more than simply combine or generate.

14 Q. So there's nothing about this sentence
15 that tells you, besides the word "generated"
16 itself, that tells you that the data feeds are
17 produced at the information source as opposed to
18 combined by the information source.

19 MS. CLARK: I'm going to object to
20 form.

21 MR. FRANZINI: I might have said that
22 wrong. I'll give it to you again. Withdrawn.

23 BY MR. FRANZINI:

24 Q. There's nothing about this paragraph
25 that you cite in paragraph 57 of your

1 declaration other than the word "generated"
2 itself that tells you whether the data feeds are
3 produced by the information sources by combining
4 data or by creating the content of the data,
5 correct?

6 A. Aside from the general understanding
7 of the word "generate," there's nothing else in
8 this citation that would point to creating as
9 opposed to creating and combining.

10 Q. So the only support you have for
11 the -- your opinion that generating is limited
12 to producing by creating and excludes producing
13 by combining is your understanding of the word
14 "generating," correct?

15 MS. CLARK: Object to form.

16 THE WITNESS: My understanding is
17 certainly the main contribution I make in this
18 discussion.

19 BY MR. FRANZINI:

20 Q. Well, it's not just -- well,
21 withdrawn.

22 You don't point to any evidence other than
23 your own opinion that the word "generating"
24 refers only to producing by creating the content
25 and not producing by combining, correct?

1 MS. CLARK: Object to form.

2 THE WITNESS: The only specific
3 evidence that I'd point to, for example, in 58
4 is my own understanding of the word "generate,"
5 what I believe a person of skill would have
6 understood at the time of the invention.

7 BY MR. FRANZINI:

8 Q. Well, that's not just an example.
9 It's the only thing you point to, right?

10 MS. CLARK: Object to form.

11 THE WITNESS: The declaration speaks
12 for itself, but, again, 58 does constitute my
13 opinion of what a person of skill would have
14 thought the term meant.

15 BY MR. FRANZINI:

16 Q. So you provide your opinion of what a
17 person of skill would understand the word
18 "generating" to mean, but you don't cite to any
19 intrinsic or extrinsic evidence that supports
20 that opinion, correct?

21 MS. CLARK: Object to form.

22 THE WITNESS: I don't point to any
23 extrinsic evidence. I do point to the intrinsic
24 evidence, and my understanding of what a person
25 of skill would have thought the term meant is

1 consistent with that intrinsic evidence.

2 BY MR. FRANZINI:

3 Q. So you point to the intrinsic evidence
4 when -- withdrawn.

5 When you say you point to the intrinsic
6 evidence, you mean that paragraph that we just
7 discussed, right?

8 A. That's correct.

9 Q. And we agree that that paragraph
10 doesn't actually say that generating --
11 withdrawn.

12 We agree that the only thing in that
13 paragraph -- withdrawn.

14 We agree that that paragraph doesn't give
15 any information about whether the word
16 "generated" means producing by combining or
17 producing by creating, correct?

18 MS. CLARK: Object to form.

19 THE WITNESS: I believe the use of the
20 word "generated" in the cited portion of the
21 written description is consistent with my
22 construction.

23 BY MR. FRANZINI:

24 Q. Is it inconsistent with an
25 understanding of generating that includes

1 producing by combining?

2 A. That's not something I considered.

3 Just sitting here it does not appear to be

4 inconsistent.

5 Q. So the paragraph you cite on page --

6 withdrawn.

7 The passage from the written description

8 that you cite on paragraph 57 of your

9 declaration is consistent with the word

10 "generating" meaning producing by combining and

11 it's also consistent with an interpretation of

12 generated that is limited to producing by

13 creating, correct?

14 MS. CLARK: Object to form.

15 THE WITNESS: Other than the general

16 understanding of the word "generate," there

17 would be no inconsistency either way.

18 BY MR. FRANZINI:

19 Q. Now in paragraph 59 you discuss the

20 Quote.com example?

21 A. Yes.

22 Q. And so it seems like -- withdrawn.

23 You make two assertions about the

24 Quote.com example. The first is that there is

25 no indication that the claims of the '154 are

1 BY MR. FRANZINI:

2 Q. Well, how about -- take a Macintosh
3 computer. Would a Macintosh computer that is
4 capable of running Windows necessarily be
5 configured to run Windows?

6 MS. CLARK: Object to form.

7 THE WITNESS: If you define
8 "configured to run Windows" as meaning having
9 the software on the computer to run Windows,
10 then it's not necessarily there.

11 BY MR. FRANZINI:

12 Q. Is it possible to receive data without
13 parsing it?

14 A. One can receive data without in any
15 way breaking or dividing the data up into
16 components.

17 Q. Please turn to page -- withdrawn.
18 Please turn to paragraph 76 of your
19 declaration.

20 A. Okay.

21 Q. You mention in the second half of
22 paragraph 76... the specifications of the '279
23 patent and the '154 patent make clear that the
24 claimed invention uses different parsers based
25 on the type of content of the incoming data, and

1 Q. --

2 A. And, again, if you don't mind just
3 telling me which paragraph.

4 Q. Oh, sure. Well, I'd like to ask you
5 specifically your opinion that the parsers must
6 correspond to the content of a message --

7 A. Okay.

8 Q. -- which is set forth in paragraph 73
9 of your declaration.

10 A. Okay.

11 Q. Now a parser, apart from the -- well,
12 withdrawn.

13 So you mentioned before that the reason
14 that you believe that the parser must correspond
15 to the content of the message was the written
16 description, correct?

17 A. That's correct. Every parser
18 described in the written description is a parser
19 associated with particular content.

20 Q. So the word "parser" in general
21 doesn't necessarily require an association with
22 particular content; rather, a person of ordinary
23 skill in the art would see the word "parser" in
24 the claims and then turn to the written
25 description to understand what was meant, what

1 MS. CLARK: Object.

2 THE WITNESS: Sorry.

3 BY MR. FRANZINI:

4 Q. And you state, for example, Fig. 24(d)
5 depicts a stock viewer that displays all stock
6 ticker information from a stock information
7 source.

8 A. That's correct.

9 Q. Now is stock ticker information from
10 an information source -- withdrawn.

11 Is stock ticker information from a stock
12 information source a category of information?

13 MS. CLARK: Object to form.

14 THE WITNESS: You could define a
15 category as information from a stock ticker, if
16 you so chose.

17 BY MR. FRANZINI:

18 Q. You also say that the specification
19 similarly -- withdrawn.

20 You say that the specification similarly
21 discloses an email viewer capable of reading all
22 incoming email.

23 A. That's correct.

24 Q. Is email a category of information?

25 A. You could define a category as email

1 information.

2 Q. Now in paragraph 134 you say that you
3 do not believe it is necessary to add
4 information received from an information source
5 that provides data to the central broadcast
6 server because it is clear from the claim
7 language itself that the claim data is
8 transmitted from an information source to a
9 central broadcast server. Well, withdrawn.

10 You say that in paragraph 134 in the
11 second-to-last sentence, you say, it is already
12 clear from the claim language that the viewer is
13 associated with the data from an information
14 source to a central broadcast server.

15 A. That's correct.

16 Q. So your objection to including the
17 limitation -- withdrawn.

18 Your objection to including the
19 requirement that a viewer be for viewing
20 information received from an information source
21 that provides data to the central broadcast
22 server is that you believe it to be redundant.

23 MS. CLARK: Object to form.

24 THE WITNESS: I believe it would be
25 redundant.

1 Q. Is it your understanding that the term
2 "subscriber database" as it is used in the
3 asserted claims is narrower than its ordinary
4 meaning?

5 A. Yes -- or it's general meaning, I
6 should say.

7 Q. So the general meaning of a subscriber
8 database would not require the database to
9 determine which subscribers receive which types
10 of content, but it's your opinion that the way
11 that the word is used in the asserted claims it
12 has that requirement?

13 MS. CLARK: Object to form.

14 THE WITNESS: It's my understanding
15 that subscriber database, as used in the claims
16 and as used in the written description, is a
17 database to determine which subscribers receive
18 which types of content. It is not simply, for
19 example, a list of subscribers.

20 BY MR. FRANZINI:

21 Q. But a list of subscribers would meet
22 the general definition of a subscriber database?

23 MS. CLARK: Object to form.

24 BY MR. FRANZINI:

25 Q. It's not the particular definition of

1 subscriber database that you believe applies to
2 the use of that word in the asserted claims?

3 MS. CLARK: Sorry about that. Object
4 to form.

5 THE WITNESS: Absent the patent, the
6 claim language, the written description, if we
7 were to discuss, for example, the subscriber
8 database for The Economist magazine, there would
9 be information in there that would not
10 necessarily determine which subscribers receive
11 which types of content, I assume. Maybe they do
12 have different versions for different people,
13 but let's suppose it's simply a list of
14 subscribers to a neighborhood newsletter --
15 that's a better example -- it's simply going to
16 be a list of people who receive the newsletter
17 and that's it. That's clearly not what's meant
18 in the claims that we've been discussing.

19 BY MR. FRANZINI:

20 Q. So that example you just gave would
21 meet the general definition of subscriber
22 database but in your view would not meet the
23 term "subscriber database" as it's used in the
24 claims and in the written description of the
25 asserted patents?

1 A. That's correct.

2 Q. The portion of the written description
3 that you believe supports that opinion is set
4 forth in paragraph 137 of your declaration?

5 A. Yes.

6 Q. The two passages that you cite are
7 describing embodiments in the specification?

8 A. That's correct.

9 Q. Is it your understanding that, if a
10 patentee submits a definition to the Patent
11 Trial and Appeal Board in connection with a
12 preliminary response to a post-grant proceeding
13 such as an inter partes review or a covered
14 business method review, that that definition is
15 binding in litigation?

16 MS. CLARK: Object to form.

17 THE WITNESS: It's my understanding
18 that statements made by the applicant in a
19 variety of proceedings do indicate what the
20 patentee believes is the extent of his or her
21 invention.

22 BY MR. FRANZINI:

23 Q. And you're referring to statements
24 made in the prosecution history?

25 A. That would be an example.